Karpal Singh a/l Ram Singh v DP Vijandran

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W–02–385 OF 2000

HAIDAR, ABDUL HAMID MOHAMAD AND ABDUL KADIR SULAIMAN JJCA

3 AUGUST 2001

***Tort** — Defamation — Damages — Press statement alleged to be defamatory — Plaintiff a politician, former deputy speaker of Dewan Rakyat, member of Parliament and lawyer — Allegation of issuing dishonoured cheque — Damage to reputation and credit of plaintiff — Whether plaintiff's reputation was at its pinnacle at the time of libel — Award of RM500,000, whether excessive*

***Tort** — Defamation — Pleadings — Press statement alleged to be defamatory — Failure to plead actual words in toto in pleadings — Translation into Bahasa Malaysia not certified — Whether pleadings defective*

The respondent had sued the appellant for defamation. The High Court gave judgment for the respondent and awarded a total of RM500,000 in damages, taking into consideration the position and standing of the plaintiff as a politician, a former deputy speaker of the Dewan Rakyat, a member of Parliament and a lawyer (see [2000] 3 MLJ 22). The appellant appealed. It was submitted that: (i) the respondent did not sue the appellant on the actual words of the appellant's press statement in the sense that the respondent did not quote the whole of the press statement issued by the appellant and thus rendering the pleading defective; (ii) the translation into Bahasa Malaysia was not certified; and (iii) the damages awarded was excessive.

Held, dismissing the appeal on liability and allowing the appeal on quantum:

(1) There is neither statutory provision nor rules of court that the actual words must be pleaded *in toto* failing which the action fails. The court must look at the purpose, what prejudice it causes to a defendant in putting up his defence, in short the justice of the case. Where the libel turns on the meaning of a particular word or words, of course the words must be pleaded so that the word used can be understood in the proper context it was used. In the present case, the court were concerned with statements of facts. There were no two meanings to them. It was not even challenged before the court that they have other meanings. There was clearly no prejudice to the appellant. In the circumstances, the court found that even though the press statement was not quoted in toto in the statement of claim, the failure to do so, in the circumstances of this case, was not fatal (see p 178D–G).

(2) The press statement and the press report were in English. The material words were quoted in the statement of claim. The

lawyers and the judges understood them perfectly well. Anyway, a translation was given in Malay which, though not certified, was not disputed that it was correct. Under the circumstances, the court found no merit in the argument that the action failed because the translation into Bahasa Malaysia was not certified (see p 179H–I).

(3) The trial judge had misapprehended the facts and was also influenced by the prevailing trend then in awarding the damages. No doubt the position and standing of the respondent was an important factor to be considered. But the fact that a person had at one time held a high position is not synonymous with his having a high personal integrity, reputation and honour. It would not be correct to say that the respondent's standing, character, credit and reputation as a public figure was at its pinnacle at the time the libel was committed and totally collapsed because of this libel. This libel, after all, concerned a dishonoured cheque. Taking all factors into consideration, the court found that the award made by the trial judge was excessive. A total award of RM100,000 would be more reasonable (see pp 185H–I, 186B–C, G).

[**Bahasa Malaysia summary**

Responden telah menyaman perayu kerana fitnah. Mahkamah Tinggi telah memberikan penghakiman yang menyebelahi responden dan mengawardkan sejumlah RM500,000 sebagai ganti rugi, dengan mengambilkira kedudukan dan pendirian plaintif sebagai seorang ahli politik, bekas timbalan speaker Dewan Rakyat, ahli Parlimen dan peguam (lihat [2000] 3 MLJ 22). Perayu telah membuat rayuan. Adalah dihujahkan bahawa: (i) responden tidak menyaman perayu berdasarkan perkataan-perkataan sebenar kenyataan akhbar perayu dalam erti kata bahawa responden tidak memetik keseluruhan kenyataan akhbar yang dikeluarkan oleh perayu dan oleh itu menyebabkan pliding tersebut cacat; (ii) tafsiran ke dalam Bahasa Malaysia tidak disahkan; dan (iii) ganti rugi yang diawardkan adalah keterlaluan.

Diputuskan, menolak rayuan atas liabiliti dan membenarkan rayuan atas kuantum:

(1) Tiada peruntukan-peruntukan statutori maupun kaedah-kaedah mahkamah bahawa perkataan-perkataan sebenar mestilah diplikan sepenuhnya jika tidak tindakan akan gagal. Mahkamah mestilah melihat tujuannya, apa prejudis yang berlaku ke atas defendan dengan mengemukakan pembelaan beliau, pendek kata keadilan kes tersebut. Di mana libel membawa maksud satu perkataan atau perkataan-perkataan tertentu sememangnya perkataan-perkataan tersebut mestilah diplikan supaya perkataan yang digunakan boleh difahami dalam konteks yang betul ia digunakan. Di dalam kes ini, mahkamah mementingkan

penyataan fakta-fakta. Tiada dua maksud kepada perkataan-perkataan tersebut. Ia tidak langsung dicabar di hadapan mahkamah bahawa perkataan-perkataan tersebut mempunyai maksud lain. Adalah jelas tiada perjudis terhadap perayu. Dalam keadaan demikian, mahkamah mendapati bahawa walaupun kenyataan akhbar tidak memetik sepenuhnya penyataan tuntutan tersebut, kegagalan untuk berbuat demikian, dalam keadaan kes ini, tidak memudaratkan (lihat ms 178D–G).

(2) Kenyataan akhbar dan laporan akhbar adalah dalam bahasa Inggeris. Perkataan-perkataan yang penting telah dipetik dalam penyataan tuntutan. Peguam-peguam dan hakim-hakim memahami perkataan-perkataan tersebut dengan baik sekali. Lagipun, satu penafsiran dalam bahasa Malaysia telah diberikan, meskipun tidak disahkan, tidak dipertikaikan bahawa ia adalah betul. Di dalam keadaan ini, mahkamah mendapati tiada merit dalam penghujahan bahawa tindakan tersebut telah gagal kerana penafsiran dalam bahawa Malaysia tidak disahkan (lihat ms 179H–I).

(3) Hakim perbicaraan telah salah faham tentang fakta-fakta dan juga dipengaruhi oleh budaya yang wujud ketika itu semasa mengawardkan ganti rugi. Adalah tidak dinafikan kedudukan dan pendirian responden memainkan faktor penting untuk dipertimbangkan. Tetapi hakikat bahawa seseorang pada ketika itu memegang kedudukan tinggi tidak merupakan sinonim dengan beliau mempunyai integriti peribadi yang tinggi, reputasi dan dihormati. Adalah tidak betul untuk mengatakan bahawa kedudukan, sikap, kewibawaan dan reputasi responden sebagai seorang tokoh masyarakat berada di kemuncak pada masa libel dilakukan dan telah musnah sama sekali kerana libel ini. Libel ini, lagipun, adalah berkaitan satu cek tak laku. Dengan mengambilkira semua faktor-faktor dalam pertimbangan, mahkamah mendapati bahawa award yang dibuat oleh hakim perbiacaraan adalah keterlaluan. Award berjumlah RM100,000 adalah lebih munasabah (lihat ms 185H–I, 186B–C, G).]

Notes

For cases on damages in defamation cases, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 216–222.

For cases on pleadings in defamation cases, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 366–369.

Cases referred to

Abdul Karim bin Ayob v Kumpulan Karangkraf Sdn Bhd [2000] 1 MLJ 243 (refd)

AJA Peter v OG Nio & Ors [1980] 1 MLJ 226 (refd)

British Data Management plc v Boxer Commercial Removals plc & Anor [1996] 3 All ER 707 (refd)

Cheah Cheng Hock & Ors v Liew Yew Tiam & Ors [2000] 6 MLJ 204 (refd)
Chong Siew Chiang v Chua Ching Geh & Anor [1995] 1 MLJ 551 (refd)
Collins v Jones [1955] 2 All ER 145 (refd)
Dato Musa bin Hitam v SH Alatas & Ors [1991] 2 CLJ 314 (refd)
Datuk Harris bin Mohd Salleh v Abdul Jalil bin Ahmad [1984] 1 MLJ 97 (refd)
Dr Jenny Ibrahim v S Pakianathan [1986] 2 MLJ 154 (refd)
Great One Coconut Products Industries (M) Sdn Bhd v Malayan Banking Bhd [1985] 2 MLJ 469 (refd)
Harris v Warre 4 CPD 125 (refd)
Hassan & Anor v Wan Ishak & Ors [1961] MLJ 45 (refd)
Institute of Commercial Management United Kingdom v New Straits Times Press (M) Bhd [1993] 1 MLJ 408 (refd)
John Lee & Anor v Henry Wong Jan Fook [1981] 1 MLJ 108 (refd)
Liew Yew Tiam & Ors v Cheah Cheng Hock & Ors [2000] 6 MLJ 204 (refd)
Liew Yew Tiam & Ors v Cheah Cheng Hoe & Ors [2001] 2 CLJ 385 (refd)
Lim Kit Siang v Datuk Dr Ling Liong Sik & Ors [1997] 5 MLJ 523 (refd)
Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals [2000] 4 MLJ 77 (refd)
MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals [1995] 2 MLJ 493 (refd)
Ng Cheng Kiat v Overseas Union Bank [1984] 2 MLJ 140 (refd)
Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors [2000] 2 MLJ 175 (refd)
Normala Samsudin v Keluarga Communication Sdn Bhd [1999] 2 MLJ 654 (refd)
Pang Fee Yoon v Piong Kien Siong & Ors [1999] 3 MLJ 189 (refd)
Slim v Daily Telegraph Ltd [1969] 1 All ER 497 (refd)
Tan Sri Vincent Tan Chee Yioun v Haji Hassan bin Hamzah & Ors [1995] 1 MLJ 39 (refd)
Thiruchelvasegaram a/l Manickavasegar v Mahadevi a/p Nadchatiram [2000] 5 MLJ 465 (refd)
Tjanting Handicraft Sdn Bhd & Anor v Utusan Melayu (M) Bhd & Ors [2001] 2 MLJ 544 (refd)
Tournier v National Provincial Bank [1923] All ER 550 (refd)
Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393 (refd)
Ummi Hafilda bte Ali & Anor v Karangkraf Sdn Bhd & Ors (*No 2*) [2000] 6 MLJ 532 (refd)
Workers' Party v Tay Boon Too & Anor [1975] 2 MLJ 124 (refd)

Legislation referred to

Penal Code s 420

A *Karpal Singh* (*Karpal Singh & Co*) for the appellant.
DP Vijandran representing himself as respondent.

Abdul Hamid Mohamad JCA (delivering judgment of the court):

The appeal

B In the High Court, the respondent had sued the appellant and two others for defamation (see [2000] 3 MLJ 22). The court gave judgment for the respondent against the appellant and the other two defendants who did not appeal to this court. This judgment is in respect of the appeal by the appellant only.

C *The cross appeal*

The respondent had also filed a notice of cross appeal against what he considered as inadequacy of the damages awarded. Both the appeal and the cross appeal were scheduled to be heard together. The appellant who appeared in person (so was the respondent) raised a preliminary objection D to the respondent's cross appeal. We heard their respective arguments, upheld the preliminary objection and struck out the respondent's cross appeal with costs. We then proceeded to hear the appellant's appeal. This judgment is only in respect of the appeal proper.

E *The facts*

Both the appellant and the respondent are advocates and solicitors. They are also politicians belonging to two opposing parties: the appellant belonging to opposition DAP and the respondent belonging to the MIC, a component of the ruling Barisan National. The appellant was at the F material time a member of Parliament and the State Legislative Assembly while the respondent was the Deputy Speaker of the Dewan Rakyat (Parliament). It is not disputed that they had their differences and clashes prior to the incident that leads to this action.

The respondent had sued the appellant in another matter. In that suit, the Supreme Court ruled in favour of the appellant and the respondent was G ordered to pay the taxed costs of RM9,414.38 including the allocatur fees.

On 5 February 1996, the respondent's solicitors, Messrs Murthi & Partners, faxed to the respondent the allocator together with a letter from the appellant. The letter says that since the respondent had not responded to the appellant's earlier notice of demand, the appellant was preparing H execution proceedings and that the respondent 'should face the consequences following therefrom'. Being dissatisfied with the conduct of his solicitor, the respondent decided to take over the conduct of the matter. On 9 February 1996, the respondent telephoned the office of Karpal Singh & Co and spoke to one Mr Manoharan, the legal assistant. The respondent asked for time. When the respondent finally received the file from his I solicitors, he was out of time to apply for further review and decided to settle the sum. He sent a notice of change of solicitors and a Bank Buruh (Malaysia) Bhd cheque for the said sum.

On 16 February 1996 the respondent received a phone call from the Bank informing him that he had issued a cheque from an account that had been closed.

Subsequently, the respondent was informed by one Mr Indran, an accountant of Karpal Singh & Co that there was a problem with the cheque. On the same day the respondent made a replacement cheque from Bank of Commerce client's account for the same amount. The respondent also prepared a letter to Messrs Karpal Singh & Co, for the attention of Mr Indran. The letter, dated 16 February 1996 inter alia says that the respondent regrets that the earlier cheque was issued from a wrong account due to clerical error. The letter also requested Mr Indran to send his office boy to collect the replacement cheque immediately. Mr Indran could not oblige the request and agreed to the respondent's proposal to send the cheque by post notwithstanding the fact that a long stretch of holidays was imminent. On the same day the respondent faxed the letter of 16 February 1996 to the appellant's firm.

The appellant left for holidays in India and returned on 26 February 1996. The respondent telephoned Mr Indran who again could not send an office boy to collect the cheque. So, on 28 February 1996 the respondent posted the letter of 16 February 1996 together with the replacement cheque to the appellant. The letter was received on 1 March 1996.

On the 2 March 1996, the appellant issued a press statement. The full text is reproduced herewith.

PRESS STATEMENT

> On 27 May 1992 the Supreme Court ordered DP Vijandran to pay me costs in relation to a defamation suit filed by him against me for involvement in the pornographic tapes issue.
>
> On 7 January 1994 the Deputy Registrar of the Federal Court ordered Vijandran to pay me RM9,414.38 as costs.
>
> On February 1996 Vijandran sent my legal firm a Bank Buruh (Malaysia) Berhad client's account cheque for RM9,414.38. This cheque was dishonoured with the remark, 'Account Closed' when presented for payment (Xerox copy of the dishonoured cheque annexed herewith).
>
> Vijandran's conduct in issuing a client's account cheque, which was subsequently dishonoured, amounts to a serious offence of cheating under s 420 of the Penal Code. His conduct is also dishonourable and renders him to be a person unfit to be on the rolls of Advocates & Solicitors in the country, will be lodging a police report against Vijandran so that the police can take appropriate action and also write to the Bar Council with a view to his being struck off the rolls. The country can ill-afford to have Vijandran in the legal profession. It would not be in the public interest and neither will it be in the interest of an honourable profession like the legal profession.
>
> Dated this 2 March 1996
>
> KARPAL SINGH
> DEPUTY CHAIRMAN, DAP, MALAYSIA
> MEMBER OF PARLIAMENT, MALAYSIA.

The said press statement was published in the *Sunday Star* on 3 March 1996 by the second defendant in the court below. The report reads:

Vijandran's cheque dishonoured

PETALING JAYA: A cheque sent by former Dewan Rakyat deputy speaker DP Vijandran to lawyer Karpal Singh bounced when the latter tried to cash it.

In a statement, Karpal Singh said Vijandran sent him the cheque for RM9,414.39 after he was ordered to pay costs by the Deputy Registrar of the Federal Court on January 7 1994, over a defamation suit.

Karpal Singh who is also DAP deputy chairman, said Vijandran sent him the cheque for the amount on February 12.

Vijandran's conduct in issuing a cheque which was dishonoured is a serious offence under s 420 of the Penal Code.

This action renders him to be a person unfit to be on the rolls of Advocates and Solicitors in the country,' he said.

He added that he would lodge a police report against Vijandran and write to the Bar Concil to complain about Vijandran's action.

On the following day, 4 March 1996, the respondent telephoned Mr Indran who confirmed that he (Mr Indran) had appraised the appellant about the respondent's explanation of the wrong cheque being sent and the subsequent replacement with a valid cheque. On the same day the respondent faxed a letter to the appellant's firm confirming all that had transpired.

On 5 March 1996, an article was published in *The New Straits Times* by the third defendant in the High Court. The report reads:

Karpal files police report over cheque

KUALA LUMPUR, Mon — Member of Parliament Karpal Singh has lodged a report against lawyer DP Vijandran for issuing him a cheque for RM9,414.38 which was dishonoured.

Karpal said Vijandran's conduct in issuing the cheque, which was subsequently dishonoured, amounted to cheating under s 420 of the Penal Code.

The report was lodged at the Dang Wangi district police station at 1 pm today.

Vijandran had sent Karpal a Bank Buruh (M) Bhd client's account cheque on February 12 which was dishonoured with the remark 'Account Closed' when presented for payment.

Karpal said Vijandran's conduct rendered him unfit to be on the rolls of Advocates and Solicitors in the country.

I will write to the Bar Council that he be struck off from the Rolls.

It will not be in the interest of the legal profession.

The respondent then filed a suit in the High Court claiming damages for libel, injunction and costs.

It is important that part of the statement of claim that contains the words that forms the basis of the claim be reproduced:

6(a) On 2 March 1996, the defendant falsely wrote and published a press statement in English to newspaper representatives and other persons the following words of and concerning the plaintiff:

'Vijandran's conduct in issuing a cheque which was dishonoured is a serious offence under s 420 of the Penal Code.'
'This action renders him to be a person unfit to be on the rolls of Advocates and Solicitors in the country, he said.'

(b) The true meaning of the said words in Bahasa Malaysia is as follows:

Kelakuan Vijandran yang mengeluarkan sekeping cek yang ditendang adalah satu kesalahan yang serius di bawah s 420 Kanun Keseksaan.
Tindakan ini menyebabkan beliau menjadi seorang yang tidak sesuai berada dalam senarai peguambela dan peguamcara negara ini.

9(a) On 3 March 1996, the first defendant falsely and maliciously caused to be published and the second defendant falsely and/or maliciously wrote and published in the *Sunday Star* the following words in English of and concerning the plaintiff:

'Karpal Singh, who is also DAP deputy chairman, said Vijandran sent him the cheque for the amount on February 12.'

'Vijandran's conduct in issuing a cheque which was dishonoured is a serious offence under s 420 of the Penal Code.'

'This action renders him to be a person unfit to be on the rolls of Advocates and Solicitors in the country', he said.
He added that he would lodge a police report against Vijandran and write to the Bar Council to complain about Vijandran's action.

(b) The exact meaning of the said words in Bahasa Malaysia is as follows:

Karpal Singh yang juga Timbalan Pengerusi DAP telah berkata bahawa Vijandran telah menghantar kepadanya cek untuk jumlah tersebut pada 12 haribulan Februari.
Kelakuan Vijandran yang mengeluarkan sekeping cek yang ditendang adalah satu kesalahan yang serius di bawah s 420 Kanun Keseksaan.

'Tindakan ini menyebabkan beliau menjadi seorang yang tidak sesuai berada dalam senarai peguambela dan peguamcara negara ini' kata beliau. Beliau menambah bahawa beliau akan membuat laporan polis terhadap Vijandran dan menulis kepada Majlis Peguam untuk mengadu tentang tindakan Vijandran.

14 (a) Further, on or about 4 March 1996, the first defendant falsely spoke and/or wrote and published to the newspaper representatives and other persons the following words in the English language of and concerning the plaintiff:

Karpal said Vijandran's conduct in issuing the cheque, which was subsequently dishonoured, amounted to cheating under s 420 of the Penal Code.

Karpal said Vijandran's conduct rendered him unfit to be on the rolls of Advocates & solicitors in the country.

I will write to the Bar Council that he be struck off from the Rolls. It will not be in the interest of the legal profession.

(b) The true meaning of the said words in Bahasa Malaysia is as follows:

> Karpal berkata bahawa tindakan Vijandran dalam mengeluarkan cek tersebut yang mana kemudiannya telah ditendang terjumlah kepada penipuan di bawah s 420 Kanun Keseksaan.
>
> Karpal berkata bahawa tindakan Vijandran menyebabkan beliau menjadi tidak sesuai untuk berada dalam senarai peguambela dan peguamcara negara ini.
> Saya akan menulis kepada Majlis Peguam bahawa dia dibatalkan daripada senarai peguam.
> Ia bukan bagi kepentingan profesion guaman.

17 (a) On 5 March 1996, the first defendant falsely and maliciously caused to be published and the third defendant falsely and/or maliciously wrote and published in *The New Straits Times* the following words in English of and concerning the plaintiff:

> Karpal said Vijandran's conduct in issuing the cheque, which was subsequently dishonoured, amounted to cheating under s 420 of the Penal Code.
>
> Karpal said Vijandran's conduct rendered him unfit to be on the rolls of Advocates & Solicitors in the country.
>
> I will write to the Bar Council that he be struck off from the Rolls.
> It will not be in the interest of the legal profession.

(b) The exact meaning of the said words in Bahasa Malaysia is as follows:

> Karpal berkata bahawa tindakan Vijandran dalam mengeluarkan cek tersebut yang mana kemudiannya telah ditendang terjumlah kepada penipuan di bawah s 20 Kanun Keseksaan.
> Karpal berkata bahawa tindakan Vijandran menyebebkan beliau menjadi tidak sesuai untuk berada dalam senarai peguambela dan peguamcara negara ini.
> Saya akan menulis kepada Majlis Peguam bahawa dia dibatalkan daripada senarai peguam.
> Ia bukan bagi kepentingan profesion guaman.

The High Court gave judgment for the respondent and awarded damages as follows:

As against the appellant:

(1)	compensatory damages	RM250,000
(2)	aggravated damages	RM250,000
(3)	exemplary damages	Nil

As against each the second and third defendants (in the High Court):

(1)	compensatory damages	RM100,000
(2)	aggravated damages	RM100,000
(3)	exemplary damages	Nil

There were also consequential orders of injunction, interest and costs.

As stated earlier, only the appellant appealed to this court. The other two defendants did not.

Before us, Mr Karpal Singh himself argued his case. He confined his submissions to two issues or 'platform' as he called it. First, the respondent did not sue the appellant on the actual words of the appellant's press statement. Secondly, the translation into Bahasa Malaysia was not certified. I shall only confine myself to these two issues.

Actual words

On the first issue, I have reproduced the press statement, the press reports in *The Star* and *The New Straits Times* papers and the words pleaded in the statement of claim.

It cannot be denied that, first, the respondent did not sue on the press statement issued by the appellant in the sense that the respondent did not quote the whole of the press statement issued by the appellant. Neither did the respondent quote the whole of the report appearing in the two newspapers. What the respondent did was to plead that the appellant 'caused to be published' in the two newspapers the words pleaded. The words pleaded are also not the whole of the report in the two newspapers and not the whole press statement issued by the appellant. But, it cannot be denied also that the substance of what was pleaded is the same as the relevant parts appearing in the two reports and in the press statement.

The first question that this court has to decide is whether the actual words uttered by the appellant as contained in his press statement must be pleaded, and failure to do so, renders the pleading defective.

Many authorities were cited to us. I shall consider the local cases first. First, the case of *Hassan & Anor v Wan Ishak & Ors* [1961] MLJ 45 (CA). In that case the words complained of were spoken in Malay, but in the statement of claim the words were set out in English, although it was clear that the sense of the Malay words was the same as the sense of the English words that were pleaded The learned Chief Justice pointed out that the appeal was based on the single highly technical point that the precise words of the alleged slander as proved at the trial were not set out in the statement of claim. He went on to say at pp 45–46:

> In my view this point is not only highly technical, it is devoid of merit and with great respect has implicit in it a certain confusion of thought. Moreover, it is raised for the first time before us and I have grave doubts as to the propriety of allowing it to be thus raised.
>
> As a matter of practice when defamatory words are alleged to have been spoken in a language other than the language of the court these words should be set out in their original form in the pleadings and in addition a translation of them into the language of the court should be pleaded. Admittedly that was not done here but, again, admittedly the point that it was not done was never raised at any stage of the interlocutory proceedings or of the trial.
>
> But although in my view the actual words used in the language in which they were used should have been pleaded the failure to do so cannot be held to have been fatal to the case of the respondents.

A It is true that in the case of *Bradlaugh v The Queen* it was held that in an indictment for publishing an obscene book it is not sufficient to describe the book as obscene but that the actual words alleged to be obscene must be set out and if they are omitted the failure to set them out will not be cured by a verdict of guilty.

There is no question that case so far as it goes must be followed. It does
B not, however, follow from that in order to succeed the plaintiff must prove up to the hilt every word of the defamatory utterance as set out in his statement of claim. It is sufficient if he proves the substance of it.

The learned Chief Justice then went on to refer to English cases of *Harris v Warre* 4 CPD 125, *Tournier v National Provincial Bank* [1923] All ER 550 and
C also referred to *Halsbury's Laws of England* (3rd Ed) Vol 24 at p 90 and *Gatley on Libel and Slander* (4th Ed) at p 561 for the summary of the law. Perhaps, I should also reproduce the summary of the law as found in *Halsbury's Laws of England* reproduced in the learned Chief Justice's judgment:

In order that the statement complained of as being a libel or slander may be construed or interpreted, it is essential that the actual words, and not merely
D their substance, should be set forth verbatim in the statement of claim or indictment. At one time proof of the actual words pleaded was regarded as essential, but the strictness of the old rule as to variance has long ago disappeared, and now proof of language substantially the same as that pleaded is admissible and should be submitted to the jury, with the direction that they must consider whether the words are defamatory with reference only to the
E version of the conversation which they accept.

The learned Chief Justice then went on to say:

In England the different function of the judge and the jury necessarily require the plaintiff to set out his version of the words complained of because the Judge has to rule at some state or another whether or not these words are
F capable of a defamatory meaning. If he holds that they are not capable of such a meaning that is the end of the matter. But if he holds they are capable of such a meaning then it is for the jury to say whether in fact the words were spoken and whether in fact they bore such a meaning. And the position is the same here where the Judge is trier both of law and of fact. It is not sufficient to allege that defamatory words were used, the words themselves must be pleaded. But
G at the trial it is sufficient to prove words that are substantially the same. On this view there is no conflict between Bradlaugh's case, supra, and the cases of *Harris v Warre* and *Tournier.*

In the present case, in my view, the words which were proved to have been spoken by the defendants were substantially the same as the words alleged in the statement of claim and I am confirmed in that view by the
H opinions of my brethren who are much more familiar with the Malay language than I am. Moreover, there has been no question of injustice because the defence had nothing to do with the precise words used; it was a complete denial of using any words.

It is clear from the judgment that there are two parts. The first concerns pleading and the second concerns proof. As regards proof, there is no
I difficulty. Unlike in the old days, now proof of words that are substantially the same as those pleaded is sufficient. But, regarding pleading it is not that easy to understand. The authorities referred to by the learned Chief Justice

and his own words seem to suggest that 'the words themselves must be pleaded'. But earlier on in his judgment, the learned Chief Justice said:

> But although in my view the actual words used in the language in which they were used should have been pleaded the failure to do so cannot be held to have been fatal to the case of the respondents.

We must bear in mind that in that case the words complained of were spoken in Malay and the statement of claim was wholly in English. So, it cannot be said that the actual words spoken by the defendant in that case were pleaded. And that was held not to be fatal to the plaintiff's case (in that case). The fact that in that case the defendant did not deny that the words, if said, were defamatory but denied using those words should not make any difference as we are talking about what should be pleaded.

The next Malaysian case on this point is the case of *Lim Kit Siang v Datuk Dr Ling Liong Sik & Ors* [1997] 5 MLJ 523. This is a judgment of the High Court. In that case the cause of action was founded on a speech by the first defendant and on a publication in *The Star* newspaper. On the issue of pleading Zainun Ali JC (as she then was) said, at p 526:

> The authorities are manifest in their approach that it is fundamental that the exact words as uttered (by the first defendant in this case) must be reproduced in the original language with a certified translation in the language of the court, in the absence of which the claim will fail.

The learned JC (as she then was) referred to *Harris v Warre, Workers' Party v Tay Boon Too & Anor* [1975] 2 MLJ 124; [1975–1977] 1 SLR 124 and *Collins v Jones* [1955] 2 All ER 145. It is not known whether her attention was drawn to *Hassan & Anor v Wan Ishak & Ors*, a judgment of our former Court of Appeal which should be binding on her. She concluded:

> In the light of the authorities such as *Harris v Warre* and *Collins v Jones* [1955] 2 All ER 145, it is necessary for the plaintiff to plead or allege verbatim the exact words which he complains of.

We now come to the Singapore case of *Workers' Party v Tay Boon Too*.

In that case, it was alleged that the defendant had uttered defamatory words in Hokkien and that Radio Singapore had broadcast it in English. In the statement of claim the plaintiff did not set out the statement in Hokkien. The plaintiff only set out the broadcast version of the words, in English. In evidence, the plaintiff proved a reporter's version of the words.

Chuah J in his judgment said:

> Here the slander alleged was spoken in Hokkien but the words complained of were set out in English in the amended statement of claim. English is the official language of the court and in that context any other language would be a foreign language (*Gatley on Libel & Slander* (7th Ed)). If the slander alleged is in a language other than English it must be set out in the statement of claim in the foreign language precisely as spoken and followed by a literal translation. It is not enough to set out a translation without setting out the original or vice versa. (*Gatley on Libel & Slander* (7th Ed) para 987). While the absence of a translation in the pleadings may not be fatal to the plaintiff's case the absence of the original words in the foreign language in question is.

In brief, the original words spoken in Hokkien must be pleaded.

I shall now turn to the position in England. For summary of the law, I do not think I can do better than to quote from *Gatley on Libel and Slander* (9th Ed) at p 652:

> Setting out words complained of: libel. In a libel the words used are the material facts and must therefore be set out verbatim in the statement of claim, preferably in the form of a quotation: it is not enough to describe their substance, purport or effect. The law requires the very words of the libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action.' 'A plaintiff is not entitled to bring a libel action on a letter which he has never seen and of whose contents he is unaware. He must in his pleading set out the words with reasonable certainty … . The court will require him to give particulars so as to ensure that he has a proper case to put before the court and is not merely fishing for one.' The rigours of this rule may be slightly relaxed when the matter complained of is part of a television, film or other audio-visual presentation, where the combinations and permutations available are endless and the material is not easily susceptible to a detailed description of its defamatory aspects. Some flexibility may also be permitted where the plaintiff is seeking a quia timet injunction. In such a case, it is not invariably necessary for the plaintiff to set out the precise words, but the statement of claim must be pleaded with sufficient particularity to enable the defendant not only to understand what it is the plaintiff alleges the words mean, but also to enable him to decide whether they have that meaning, as well as to enable the court to frame an injunction with sufficient precision.

The case of *British Data Management plc v Boxer Commercial Removals plc & Anor* [1996] 3 All ER 707 (CA) is a very important case in that Hirst LJ in his learned judgment surveyed the leading authorities on the subject. On the importance of actual words this is what his Lordship said:

> The importance of actual words has been repeatedly stressed in the authorities, as demonstrated, for example, by the very well known passage in the judgment of Diplock LJ in *Slim v Daily Telegraph Ltd* [1968] 1 All ER 497 at pp 505–505, [1968] 2 QB 157 at pp 171–173, as follows:
>
> > 'Libel is concerned with the meaning of words. Everyone outside a court of law recognizes that words are imprecise instruments for communication the thoughts of one man to another. The same words may be understood by one man in a different meaning from that in which they are understood by another and both meaning may be different from that which the author of the words intended to convey; but the notion that the same words should bear different meanings to different men, and that more than one meaning should be 'right', conflicts with the whole training of a lawyer. Words are the tools of his trade. He uses them to define legal rights and duties. They do not achieve that purpose unless there can be attributed to them a single meaning as the 'right' meaning. And so the argument between lawyers as to the meaning of words starts with the unexpected major premise that any particular combination of words has one meaning, which is not necessarily the same as that intended by him who published them or understood by any of those who read them, but is capable of ascertainment as being the 'right' meaning by the adjudicator to whom the law confides the responsibility of determining it. … What does matter is what the adjudicator at the trial

> thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is 'the natural and ordinary meaning' of words in an action for libel.'

His Lordship also referred to *Gatley*, *Harris v Warre*, *Dalglish v Lowther* (CA), *Collins v Jones* and *AV Thames Television Ltd* and concluded:

> Having regard to the above authorities, we do not find it possible to accept Mr Nicol's first submission that it is invariably necessary for the plaintiffs to plead or allege verbatim the exact words of which he complains, provided, as stated by Denning LJ in *Collins v Jones*, he sets them out 'with reasonable certainty' which is, in our judgment, the correct test.
>
> It is important to bear in mind the purpose of a statement of claim. It is to enable the defendant to know the case that he has to meet so that he can properly plead his case, with the result that the issues are sufficiently defined to enable the appropriate questions for decision to be resolved. In a libel case, the first question is whether the words are defamatory of the plaintiff, which depends on their meaning; unless the plaintiff succeeds on this fundamental issue, his action will fail. Next, a number of questions may arise on defences which the defendant may wish to raise, for example a plea of justification, which depends on whether the words are true or false, and similarly mutatis mutandis in the case of a plea of fair comment.
>
> This purpose will not be achieved unless the words are pleaded with sufficient particularity to enable the defendant not only to understand what it is the plaintiff alleged that they meant, but also to enable him to decide whether they had that meaning and, if not, what other meaning they had or could have. Equally, unless the words are so pleaded the defendant will not be able to determine whether the words in their alleged meaning or other perceived meaning are true, or fair comment, and plead accordingly. Moreover, whenever an injunction is sought, such particularity is needed to enable the court to frame an injunction defining with reasonable precision what the defendant is restrained from publishing.
>
> This is why there must in all cases be reasonable certainty as to the words complained of, or in the case of a quia timet injunction what words are threatened, and normally this will require the pleading of the actual words or words to the same effect. Only on this basis can the case proceed properly through the interlocutory and pleading stages to trial, and then to the formulation of the questions to be put to the jury and to a proper answer to them.

It must be noted that in *British Data Management plc* the words had not been published yet. In that case, the plaintiff issued a writ and statement of claim seeking an injunction quia timet against the defendants restraining them from publishing any statements to any parties concerning the plaintiff or any of its subsidiary companies. An injunction was granted ex parte, but was subsequently discharged by the judge on an interpartes hearing on the ground that there had to be some particularity of the allegations which were said to be defamatory, with sufficient precision to enable them both to be pleaded in a statement of claim and to be answered by the defendants, and that in the instant case the pleadings lacked the necessary particularity. The plaintiff subsequently amended its statement of claim and sought a more

limited injunction restraining the defendants from publishing or broadcasting any statement to the effect that the plaintiff or any of its subsidiaries were guilty of criminal offences. The defendants applied to strike out the amended statement of claim on the basis that it disclosed no reasonable cause of action. That application was dismissed by the master, and the defendants appeal was dismissed by the judge. The defendants appealed to the Court of Appeal.

In *Collins v Jones*, even though the words have been published, the plaintiff had not seen the letter on which she founded her action. It was also decided on an application for particulars. In that case, the plaintiff brought an action for libel against the defendant who the plaintiff alleged had libelled the plaintiff in two letters sent to a third party. The plaintiff's statement of claim purported to set out the actual words of the libel. The fact was that neither she nor her advisors had seen those letters. They did not know what the letters contain. 'They were guessing', as Denning LJ put it.

The defendant applied for particulars, but was refused by the registrar and on appeal was dismissed by Donovan J. On appeal to the Court of Appeal, the appeal was allowed. In other words, the Court of Appeal held that the defendants were entitled to particulars.

Denning LJ, inter alia, said:

> In a libel action it is essential to know the very words on which the plaintiff found his claim … .
>
> Assuming that these letters did contain some statements defamatory of the plaintiff, that is not sufficient to ground a libel action. She must show what the actual words were. A plaintiff is not entitled to bring a libel action on a letter which he has never seen and of whose contents he is unaware. He must in his pleading set out the words with reasonable certainty: and to do this he must have the letter before him, or at least have sufficient material from which to state the actual words in it.

I do not think I need to consider other authorities. It is quite clear to me that, first, there is a distinction between what has to be pleaded and what has to be proved. What need be proved is very clear: the plaintiff does not have to prove every word that is pleaded but proof of words that are substantially the same as those pleaded is sufficient.

Regarding what has to be pleaded, it appears that, where the words have not been published as in *British Data Management plc* and the plaintiff is asking for an injunction to prevent the publication of the statement (the exact wording is not yet known), as stated by Gatley 'the rule may be slightly relaxed.' In such a case, the words must be set out 'with reasonable certainty.' In that case, Hirst LJ in fact borrowed the term from Denning LJ in *Collins v Jones* and added that that was the 'correct test'.

However, in *Collins v Jones* the words had been published, but the plaintiff had not seen it. True that Denning LJ used the term 'reasonable certainty' but his Lordship also said 'She must show what the actual words were.

It is understandable that where the words have not been published, it is

not possible to plead the actual words. So the test of 'reasonable certainty' is a correct test to apply in such a case. But, where the words have been published and are obtainable before the commencement of the action, on the authorities, it appears to me that that the actual words must be pleaded. What if the words have been published but the letter, for example, cannot be obtained after a reasonable effort is made prior to commencing the action? In my view, in such a situation the 'reasonable certainty' test should be applied. However, having filed the action, the plaintiff should ask for the document to be produced and having obtained it, amend his statement of claim to set out the exact words. (These view are expressed in the context that the alleged statement is in the same language as the language of the court.)

I will now discuss the position where the language of the statement is in a foreign language or not the language of the court.

We will first look at the Malaysian authorities. In *Hassan & Anor v Wan Ishak & Ors* the alleged defamatory words were spoken in Malay, not the language of the court at that time, which was English. Those words in Malay were not set out in the statement of claim. However, the then Court of Appeal held that that was not fatal.

In *Lim Kit Siang v Datuk Dr Ling Liong Sik & Ors*, it is clear that the alleged statement was not spoken 'in the language of the court.' The language of the court must be Malay and the language spoken must be other than Malay. The learned JC (as she then was) held that the 'exact words as uttered … must be reproduced in the original language with a certified translation in the language of the court, in the absence of which the claim will fail.

In *Workers' Party v Tay Boon Too & Anor* (Singapore High Court) the alleged defamatory words were spoken in Hokkien and in Singapore the language of the court is English. Chuh J held that the alleged statement 'must be set out in the statement of claim in the foreign language precisely as spoken and followed by a literal translation. It is not enough to set out the translation without setting out the original or vice versa.' The learned judge relied on *Gatley on Libel and Slander*.

The position in England is as stated by Gatley relied on by Chuah J above.

So, besides the Court of Appeal judgment in *Hassan & Anor v Wan Ishak & Ors*, authorities are clear that the statement must be set out in the original language in the statement of claim. I prefer that view.

I shall now come to the question of translation. Again, in *Hassan & Anor v Wan Ishak & Ors* where the original words in Malay were not pleaded and therefore there was no translation into the language of the court, Thomson CJ said that as a matter of practice 'those words should be set out in their original form in the pleadings and in addition a translation of them into the language of the court should be pleaded.' However, the court held that failure to do so was not fatal. The learned Chief Justice in

fact relied on the opinions of the other two judges, who were Malays, and were more familiar with the Malay language than he was.

In *Lim Kit Siang v Datuk Dr Ling Liong Sik & Ors* the learned JC (as she then was) insisted on a 'certified translation'. I must add a note here that the original language of the alleged statement is not known. It could quite likely be Mandarin.

The same position is taken by Chuah J in *Workers' Party v Tay Boon Too & Anor* (Singapore High Court) where the original language spoken was Hokkien.

In England, the authorities insist that there must be a 'literal translation.

I shall now come to the present case. In the present case, the statement of claim in para 6(a) alleged that on 2 March 1996 the appellant had written and published a press statement in English to newspaper representatives and other persons the following words:

> Vijandran's conduct in issuing a cheque which was dishonoured is a serious offence under s 420 of the Penal Code.
>
> This action renders him to be a person unfit to be on the roles of Advocates and Solicitors in the country, he said.

These words were taken from *The Star* report on 3 March 1996. The press statement of the appellant was produced during the trial as an agreed document. The first sentence is word for word the same as what appears in the press statement except for two words 'of cheating' which were omitted by the newspaper. However, s 420 of the Penal Code comes under the part under the heading of 'cheating' and the marginal note of the section itself is 'cheating and dishonestly inducing delivery of property.

Regarding the second sentence the difference is in the opening words of the sentence. In the press statement, it begins with 'his conduct is also dishonourable and … .' In *The Star* newspaper report and in the statement of claim, the sentence begins with 'This action … ' The rest of the sentence, indeed the material part is word for word the same in the press statement, *The Star* report and the statement of claim ie '… renders him to be a person unfit to be on the rolls of Advocates and Solicitors in the country.

The statement of claim also alleged that on 4 March 1996 the appellant spoke and/or wrote and published to the newspaper representatives and other persons the following words:

> Karpal said Vijandran's conduct in issuing the cheque, which was subsequently dishonoured, amounted to cheating under s 420 of the Penal Code. Karpal said Vijandran's conduct rendered him unfit to be on the rolls of advocates and solicitors in the country.
>
> I will write to the Bar Council that he be struck off from the Rolls.
>
> It will not be in the interest of the legal profession.

Again, clearly these words were taken from *The New Straits Times* report on 5 March 1996. Again we see that that the material parts are the same as the

statement in the press statement, with some changes at the beginning of two sentences as the report was in indirect speech. No one can argue that the meaning of what is reported and pleaded are different from what the press statement says. Indeed, it must be noted that the appellant, before us did not argue that the words reported and pleaded did not mean the same thing as what he admitted he said in the press statement. All he said was that the press statement was not reproduced wholly in the statement of claim and that the words reproduced were taken from the newspaper reports and not from his press statement.

Further, before us the appellant did not argue that the words as pleaded and as proved were not defamatory, that the pleading has prejudiced his defence. As made very clear to us by him in the course of his submission, he launched his attack of the judgment of the learned trial judge on two platforms — first the actual words as contained in his press statement were not pleaded and secondly, there was no certified translations.

Lest we get lost in the 'technical jungle', let us remind ourselves what these 'rules' are for. In the first place, there is neither statutory provision nor rules of court that the actual words must be pleaded *in toto* failing which the action fails, no matter what. The so-call 'rules' are developed by judges through their judgments. We have seen that under certain circumstances the 'rules' was relaxed. We must look at the purpose, what prejudice it causes to a defendant in putting up his defence, in short, the justice of the case. I have reproduces the words of Diplock LJ in *Slim v Daily Telegraph Ltd* [1969] 1 All ER 497 which were quoted with approval by Hirst LJ in *British Data Management plc* and I shall not repeat. Where the libel turns on the meaning of a particular word or words of course the words eg 'thief', must be pleaded, indeed the whole sentence and may be the paragraph should be pleaded so that the word used can be understood in the proper context it was used. Here, we are concerned with statements of facts. There are no two meanings to them. It was not even challenged before us that they have other meanings. There is clearly no prejudice to the appellant.

In the circumstances, I am of the view that even though the press statement was not quoted in toto in the statement of claim, the failure to do so, in the circumstances of this case, is not fatal. I say so for the following reasons:

(a) The statement of claim did refer to the press statement;

(b) The press statement was produced as an agreed document;

(c) The material words pleaded are substantially, in fact almost word for word the same as the undisputed words used in the press statement.

(d) The impunged words are statements of facts and bears only one meaning which is not in dispute.

(e) It is not disputed at least in this appeal that the words are defamatory;

(f) The pleading does not in any way prejudice the appellant's defence. It is not even alleged, at least in this appeal, that the pleading has in some way prejudiced the appellant in the preparation of his defence.

Certified translation

I shall now come to the question of translation. It was not argued before us that the Malay translation of the statements was not correct. All that was said was that there was no certified translation by a certified translator. We have seen that in *Hassan & Anor v Wan Ishak & Ors* the actual words in the original language the words were spoken, ie Malay, were not even reproduced. The English translation as appeared in the statement of claim was not certified. The learned Chief Justice relied on the other two Malay judges, who were certainly not certified translators, sitting with him to come to the conclusion that words spoken in Malay were substantially the same as those pleaded in English.

In approaching this issue I am of the view that the court should be pragmatic. No doubt Malay is the national language of the country and by law, the language of the court. English used to be the language of the court in this country previously. However, the position of the English language in Malaysian courts remains the dominant language of law and the court in this country. In practice, lawyers and judges refer to the English version of an Act of Parliament to know the law even though the Malay version is the authoritative text. Lawyers and judges, especially in the higher courts usually refer to the 'translated' English version of the pleading. (The truth is the Malay version is the translated version). Arguments, written or oral, are mostly in English, as in this case. Judgments in English, be they local or foreign, are quoted and read, without any translation into Malay. Documents in English produced in court, enclosed in affidavits or through witness giving oral evidence need not be translated into Malay. Judgments, especially of the superior courts are mostly written in English. They are quoted, read and argued without any translation into Malay. Judgments written in Malay contain passages in English without any translation, and vice versa. The judgments, be they in English or Malay, are quoted, read and argued on without any translation. The proceedings, the lawyers, the judges, the judgments are in fact bilingual, ie both in English and Malay. So, the position of the English language in Malaysian court is different from that of another language be it Mandarin or Tamil.

Furthermore, the position in Malaysian courts regarding the language of the court is different from that in English or even Singapore. Unlike in England and Singapore, in Malaysia Malay and English are used interchangeably in the proceedings and both are understood by lawyers and judges alike.

In this case, the press statement and the press report were in English. The material words were quoted in the statement of claim. The lawyers and the judges, understand them perfectly well, probably better than the certified interpreters. Anyway, a translation is given in Malay which, (though not a certified translation), is not disputed that it is correct. We, the judges who are in a better position than Thomson CJ in *Hassan & Anor v Wan Ishak & Ors*, know they are correct, even though we need not even rely on the translation to understand the impunged words.

Under the circumstances, with respect, I find no merit in this argument.

In the circumstances, I am of the view that the appeal on liability should be dismissed.

Damages

I shall now come to the damages. The learned trial judge had awarded the respondent as against the appellant a total of RM500,000 in damages. Before us, it was argued by the appellant that it was excessive.

The principles governing the assessment of damages in libel cases have remained unchanged over the years and need no repetition. (For statements of the principles to be applied in assessment of damages in defamation cases, see, inter alia, *Datuk Harris bin Mohd Salleh v Abdul Jalil bin Ahmad* [1984] 1 MLJ 97, *Dato Musa bin Hitam v SH Alatas & Ors* [1991] 2 CLJ 314, *Institute of Commercial Management United Kingdom v New Straits Times Press (M) Bhd* [1993] 1 MLJ 408, *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493 (CA), *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* [2000] 4 MLJ 77 and *Liew Yew Tiam & Ors v Cheah Cheng Hoe & Ors* 2 CLJ 385. It is the amount awarded that has drastically changed over the last five or six years. Therefore, before considering the amount awarded by the learned trial judge, it is important to look at the trend of awards of damages given by the courts in this country. Of course, it must be borne in mind that each case is decided on its own facts and circumstances.

I shall begin from 1980, a period of twenty years, which I think is a reasonable period for the study. To begin from a much earlier date may not reflect the recent and current positions.

In *AJA Peter v OG Nio & Ors* [1980] 1 MLJ 226, the plaintiff, an insurance supervisor of an insurance company sued the company, another agency supervisor, and the Vice President of company over an article in the official publication of the company. Abdul Hamid J (as he then was) held in the circumstances of the case and in the light of the authorities a fair and reasonable compensation should be in the region of RM15,000 for full liability. This sum was however reduced to RM9,000 because of the plaintiff's own behaviour.

In *John Lee & Anor v Henry Wong Jan Fook* [1981] 1 MLJ 108 (FC), the respondent brought an action for libel in respect of a letter sent by the Manager of a company, copies of which were sent, inter alia, to the Sarawak Commercial Employees Union. The learned trial judge awarded RM50,000 in damages. On appeal, the Federal Court held that even assuming that the appellants were liable, the damages awarded were too high and RM8,000 would have been a sufficient recompense.

In *Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor*, the plaintiff was 'the Chief Minister, President of the Berjaya Party and leader of the Barisan National in the State of Sabah' sued the defendant, the author and publisher of a book titled *Tumbangnya Harris Salleh* published just before the general election for libel. Siti Norma Yaakob J (as she then was) awarded the plaintiff RM100,000, as compensatory damages.

In *Ng Cheng Kiat v Overseas Union Bank* [1984] 2 MLJ 140, Wan Hamzah J (as he then was) awarded RM500 for libel against the defendant bank in printing the words 'Account Closed' on the plaintiff's cheque and publishing them.

In *Great One Coconut Products Industries (M) Sdn Bhd v Malayan Banking Bhd* [1985] 2 MLJ 469, Zakaria Yatim J (as he then was) awarded the plaintiff, a trader 'substantial damages in the sum of $15,000' for a wrongful dishonour of his bank draft.

In *Dr Jenny Ibrahim v S Pakianathan* [1986] 2 MLJ 154, the plaintiff, a psychologist who had been doing voluntary work at Pusat Pertolongan sued the defendant for sending copies of letters containing serious allegation of criminal breach of trust to various people. Ajaib Singh J (as he then was) awarded her RM30,000 in damages. On appeal, the Supreme Court reduced the award to RM15,000 as 'there was libel on one occasion only'.

In *Dato Musa bin Hitam v SH Alatas & Ors*, the plaintiff who was at one time the Deputy Prime Minister of Malaysia and the Deputy President of UMNO sued the defendants for libel published in a book entitled *The Challenger — Siapa Lawan Siapa*. The defendants were the author, the publisher and the printer respectively. Lim Beng Choon J awarded the plaintiff RM100,000. The penaltimale paragraph of the judgment is worth quoting to throw light on the seriousness of the libel:

> Taking all the above factors into consideration, it is manifestly clear that the defendants' motive in publishing the book containing the libellous words before the UMNO General Assembly can only be motivated by malice and the libels were perpetrated for enhancing the first defendant as a reputable writer and financial gains. In fact his profits from the sale of the book was over M$100,000. They had taken advantage of the situation by depicting the plaintiff in the most venomous and worse possible light. It is my considered opinion that the proper quantum of damages to be awarded to the plaintiff cannot be less than M$100,000.

In *Institute of Commercial Management United Kingdom v New Straits Times Press (M) Bhd* [1993] 1 MLJ 408, the plaintiff claimed against the defendants for damages for libel in respect of an article entitled *British 'Diploma Mills* step up sales racket' published by the defendants in *The New Straits Times*. Lim Beng Choon J awarded RM100,000 as compensatory damages.

In November 1994, Richard Malanjun J, in *Chong Siew Chiang v Chua Ching Geh & Anor* [1995] 1 MLJ 551, awarded the plaintiff a sum of RM30,000 in compensatory damages for libel contained in a letter by the first defendant published by the *Borneo Post*, of which the second defendant was the publisher. The plaintiff was a politician and a lawyer. He sued in his personal capacity as well as an officer of the Sarawak United People's Party.

Just three weeks later, Mokhtar Sidin J (as he then was) delivered his judgment in the case of *Tan Sri Vincent Tan Chee Yioun v Haji Hassan bin Hamzah & Ors* [1995] 1 MLJ 39. The plaintiff, the group chief executive officer of Berjaya Group Bhd, a public listed company, claimed damages for the torts of libel and conspiracy against seven defendants in respect of four

articles published in three issues of the *Malayan Industry*. Mokhtar Sidin J (as he then was) awarded a total of RM10m in damages against the defendants. The breakdown is as follows:

(1) Against the first defendant, the editor in chief – RM3m;

(2) Against the second defendant, write of the article – RM750,000;

(3) Against the third defendant, write of the article – RM2m;

(4) Against the fourth defendant, write of the article – RM1m;

(5) Against the fifth defendant, write of the article who apologized – RM250,000;

(6) Against the sixth defendant, publisher and proprietor of the magazine, RM2m;

(7) Against the seventh defendant, printer of the article, RM1m.

On appeal to the Court of Appeal, the court comprising Lamin PCA, Gopal Sri Ram and Abu Mansor JJCA dismissed the appeal and confirmed the award see [1995] 2 MLJ 493. The main judgment was written by Gopal Sri Ram JCA.

It should be noted that in his learned judgment, Gopal Sri Ram JCA, inter alia said at p 521:

> Fourthly, I do not think that it can be argued with any confidence that there is, in our jurisdiction, a line of cases that may be said to represent or even resemble a discernible trend of authority upon the quantum of damages that are to be awarded in libel actions. There are certainly no comparables unlike those which exist in personal injury cases …
>
> Fifthly, my reading of the Malaysian authorities upon the subject of damages in tort actions, leaves me with the distinct impression that they tend to regard a person's limb to be worth more than his or her reputation …
>
> I must record my strong disapproval of any judicial policy that is directed at awarding very low damages for defamation … But I do hold the view that injury to a person's reputation may occasion him at least as much, if not greater, harm than injury to his or her physical self.

At p 522, the learned judge said:

> In expressing my disagreement with any attempt to equate injury to reputation and physical injury … ' (The learned judge then went on to refer to and quoted a passage from the Australian High Court of Australia case in *Carson v John Fairfax & Sons Ltd* (1993) 113 AL 577 but stressed that he had arrived at his own conclusions despite it).

About four months before the Court of Appeal delivered its judgment in *MGG Pillay*'s case, Richard Malanjun J delivered his judgment in *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, which was reported later than the earlier mentioned case. The plaintiff, the former Chief Minister and Governor of Sarawak claimed damages for libel published in an article of a local daily newspaper. RM100,000 was awarded as compensatory damages.

In *Normala Samsudin v Keluarga Communication Sdn Bhd* [1999] 2 MLJ 654, the plaintiff, a well known television personality and a prime time newscaster sued the defendant, a publisher of Mingguan Wanita that had published on its cover a photograph of the plaintiff and an article which, inter alia, mentions a third person in her married life and payment of RM3m to her husband to release her by way of 'tebus talak'. Kamalanathan Ratnam J awarded her RM100,000 as general damages for libel and a further sum of RM100,000 as aggravated damages.

In *Pang Fee Yoon v Piong Kien Siong & Ors* [1999] 3 MLJ 189, the plaintiff an accountant sued the defendants, who were members of a partnership that employed him to audit and draw up its account relating to statutory declarations affirmed by the defendants and that the plaintiff had acted contrary to ethics of accountant and filed a complaint with the Malaysian Institute of Accountant. Suriyadi J awarded the plaintiff RM300,000 in general damages.

In *Abdul Karim bin Ayob v Kumpulan Karangkraf Sdn Bhd* [2000] 1 MLJ 243, the plaintiff, a 'Penolong Pegawai Penjaga Bomba' claimed against the defendants regarding an article published in *Mingguan Wanita* which he alleged and was found to be defamatory. Kamalanathan Ratnam J awarded the plaintiff RM100,000 in damages.

In *Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors* [2000] 2 MLJ 175, the plaintiffs, businesswomen involved in the tourism and hotel industry claimed against the defendants for libel regarding two articles in *The New Straits Times*, inter alia, that the plaintiff would make large profits by charging exhorbitant room rates. Kamalanathan Ratnam J, who by then had been assigned to hear all defamation cases in Kuala Lumpur High Court, awarded the first plaintiff RM300,000 and the second plaintiff RM200,000 as general damages. The learned judge also awarded each of the plaintiffs aggravated damages of RM200,000, making a total of RM1m.

On 12 July 2000, the Federal Court comprising the Chief Justice, Malaysia, the Chief Judge Malaya and Chief Judge Sabah and Sarawak delivered the judgment in *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* confirming the awards of RM2m in Appeal No 02–05–95(W), RM3m and RM2m against the respective appellants in Appeal No 02-02-96(w).

In *Thiruchelvasegaram a/l Manickavasegar v Mahadevi a/p Nadchatiram* [2000] 5 MLJ 465, a case involving close relatives where there was allegation of incest. James Foong J followed *MGG Pillai*'s case and awarded the plaintiff a sum of RM2m for defamation in the first suit and RM1m for the second suit.

In *Cheah Cheng Hock & Ors v Liew Yew Tiam & Ors*, the plaintiffs, advocates and solicitors claimed that the defendants by two letters had defamed them. They claimed that the words in the letters meant that they were fraudulent in their conduct, breached their professional duty of care to the defendants, dishonest, untrustworthy, attempted or conspired to defraud the defendants and not fit to be advocates and solicitors. James Foong J again referred to *MGG Pillai*'s case and awarded the plaintiff:

(1) as against the first defendant, RM500,000;
(2) as against the second defendant, RM300,000;
(3) as against the third defendant, RM50,000;
(4) as against the fourth defendant, RM150,000.

In *Ummi Hafilda bte Ali & Anor v Karangkraf Sdn Bhd & Ors* (*No 2*) [2000] 6 MLJ 532, the plaintiffs sued the defendants for publishing an article about them in *Bacaria*. The headline on the front page of the magazine stated 'Ummi Hafilda NIKAH'. Kamalanathan Ratnam J awarded each plaintiff RM25,000 against each of the defendants.

Then comes the Court of Appeal decision in *Liew Yew Tiam & Ors v Cheah Cheng Hock & Ors*. This is an appeal against the judgment of James Foong J reported in [2000] 6 MLJ 204 mentioned earlier. Gopal Sri Ram delivered the judgment of the court. The court held, inter alia, that the learned trial judge had fell into an error when he made separate awards of damages against each of the appellants and reduced the awards totaling RM1m to RM100,000. What is most interesting to note is the observation of the learned judge on *MGG Pillai*'s case:

> In the process of making our assessment we have not overlooked the recent trend in this country of claims and awards in defamation cases running into several million Ringgit. No doubt that trend was set by the decision of this Court in *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun*. It is a decision that has been much misunderstood. The underlying philosophy of that decision is that injury to reputation is as, if not more, important to a member of our society than the loss of a limb. But we think the time has come when we should check the trend set by that case. This is to ensure that an action for defamation is not used as an engine of oppression. Otherwise, the constitutional guarantee of freedom of expression will be rendered illusory.
>
> We would add that we do not regard the affirmation by the Federal Court of the decision in *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun* as an insurmountable hurdle of binding precedent to our decision in the present case. For, at the end of the day, the Federal Court affirmed the award made in the circumstances of that particular case as a proper exercise of judicial discretion by the High Court upon the question of damages. We do not think that it automatically follows as a matter of policy that the plaintiff in every case should be entitled to receive an award in millions of ringgit.

Slightly less than a month after the judgment in *Liew Yew Tian & Ors v Cheah Cheng Hock & Ors* was delivered by the Court of Appeal but before it was reported Kamalanathan Ratnam J delivered his judgment in *Tjanting Handicraft Sdn Bhd & Anor v Utusan Melayu (M) Bhd & Ors* [2001] 2 MLJ 544. In this case, the first plaintiff was a manufacturer of batik materials and the second plaintiff was the managing director and its alter ego. The first defendant was the publisher of the magazine called *Wanita*. The second defendant was the editor, the third defendant was a journalist and the fourth defendant was the printer of the magazine respectively. The first plaintiff was commissioned by the Ministry of International Trade and Industry to supply batik attire to the leaders of the 21 countries attending the APEC meeting in Malaysia. The plaintiff sued the defendants in respect of an article in the magazine which the plaintiff alleged to mean that the plaintiffs

produced unsightly batik and that the second plaintiff had brought shame to the country by allowing the world leaders to wear unsightly and ugly shirts.

The learned judge awarded:

(1) the first plaintiff RM300,000 as damages for slander of goods;

(2) RM700,000 to the second plaintiff as damages for libel;

(3) RM300,000 to the second plaintiff as aggravated damages.

Total RM1.3m.

I may have missed out some cases but I think that the cases that I have referred are sufficient to show the trend. Until the arrival of *Vincent Tan* in 1995, the highest award ever given by the court in this country was RM100,000. *Vincent Tan* sky rocketed the awards. When the award was confirmed by the Court of Appeal, what was an isolated pinnacle in an otherwise undulating plain, the trend is set. When the Federal Court confirmed it, it became a binding precedent in all the courts in this country. But, now the Court of Appeal in *Liew Yew Tiam* has had second thoughts about it. The learned judge of the Court of Appeal who wrote the main judgment in *MGG Pillai* has sought to distinguish *MGG Pillai*'s case. 'It is a decision that has been much misunderstood and the trend should be checked,' he said.

This court is bound by the decisions of the Federal Court. But what is binding is the principle laid down by the Federal Court in assessing damages in libel cases, not the amount. The amount to be awarded in each case depends on the facts and the circumstances of the case. Indeed, how much is too much, how much is too little and how much is reasonable is quite subjective. No scale can be fixed. But it does not mean that, given a set of facts, the appellate court cannot say confidently that an award is too little or too much or reasonable. It is the same as in an appeal against sentence in a criminal case or an appeal against an award of damages in other civil cases.

The principle that this court should apply is clear: whether this court is of the view that that the trial judge had 'acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered'. (See *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* and the cases referred to therein).

I would not say that the learned trial judge had acted on wrong principle in this case. However, I am of the view that the learned judge has misapprehended the facts and was also influenced by the prevailing trend then.

A lot of reliance was placed by the learned trial judge on the position and standing of the plaintiff as a politician, a former Deputy Speaker of the Dewan Rakyat, a member of Parliament and a lawyer. No doubt the position and standing of the plaintiff is an important factor to be considered. But the fact that a person had at one time held a high position is not synonymous with his having a high personal integrity, reputation and honour.

To lose a lot of anything one has to have a lot of that thing in the first place.

The respondent relied on his position as a public figure in this suit. But the same members of the public who would have read the reports in the two newspapers would also have read in all the newspapers in the country about him and the reasons leading to the resignation of the respondent from the post of Deputy Speaker and his downfall in politics. It would not be correct to say that the plaintiff's standing, character, credit and reputation as a public figure was at its pinnacle at the time the libel was committed and totally collapsed because of this libel. In any event, he certainly cannot claim to enjoy a higher standing, credit and reputation as a public figure than Dato' Musa bin Hitam who was only awarded RM100,000 for such a serious libel published just before the UMNO General Assembly.

This libel, after all, concerns a dishonoured cheque. We have seen that in 1985, Zakaria Yatim J (as he then was) awarded a trader RM15,000 for wrongful dishonour of his bank draft and that amount was considered by the learned judge as 'substantial damages'.

Furthermore, the fact that the respondent had issued a cheque from the client's account to settle the costs ordered against him personally is also questionable.

All these factors should be taken into account.

Now, coming to the appellant. He is a well known lawyer and politician. He was a member of Parliament and a state Assemblyman representing opposition at that time. It is common knowledge that he was responsible for exposing the respondent culminating in the respondent's political downfall. The cheque incident gave him another opportunity to further ruin the respondent. He utilized it to the fullest. The fact that his press statement was typed on his 'Member of Parliament' letterhead with his party symbol and the fact that he signed the press statement as 'Deputy Chairman, DAP, Malaysia' and 'Member of Parliament, Malaysia' shows his political motive. He did not apologize. And he stood his ground throughout. That is the scenario.

In the circumstances, I am of the view that the award made by the learned trial judge is excessive. A total award of RM100,000 would be more reasonable.

The appeal on liability is dismissed and the appeal on quantum is allowed to the extent that the amount of damages is reduced to RM100,000.

As the appellant failed in the appeal on liability but succeeds partly on the award of damages, a fair order as to costs is that half costs of this appeal is given to the respondent.

Order accordingly.

Reported by Jafisah Jaafar